Everything Old is New Again:  
2014 Tennessee Workers’ Compensation Laws

Presented by: Fred Baker  
fbaker@wimberlylawson.com

Statutory Construction

• Remedial vs. Strict Construction
• Under old law, all doubts as to causation, compensability, etc., are resolved in favor of employee due to equitable interpretation of statute
• New legislation calls for a strict construction of the statute that should not favor either party

Judicial vs. Administrative System

• Old Law: temporary issues handled by Department of Labor and then trial courts would adjudicate issues of permanency
• New Law: jurisdiction of trial courts is eliminated, and replaced by administrative Court of Workers’ Compensation Claims which adjudicates all issues
MMI and Impairment Ratings

• MMI shall be conclusively presumed when the authorized treating physician ends all active medical treatment and the only care provided is for the treatment of pain or treatment of mental injury following physical injury

• Impairment ratings are assigned for body as a whole (BAW)
  - No more ratings to scheduled members
  - All PPD cases now based on 450 weeks (instead of 400)

• The treating physician or chiropractor assigns the impairment rating (but IME’s are still permitted)
  - Ratings should not take into consideration pain complaints of the worker (notwithstanding allowances for pain under the AMA Guides)
  - There is a statutory presumption of correctness for ATP’s opinion on impairment rating, rebuttable by preponderance of the evidence

Permanent Partial Disability (PPD)

• Initial award of PPD equals the impairment rating times 450 weeks regardless of work status

• Example: Initial PPD award for Employee with 7% rating and $500.00 compensation rate will calculated as follows:
  - 0.07 X 450 weeks X $500.00 = $15,750.00

• This determines the initial "period of compensation"

Period of Compensation = Rating times 450 weeks

For example: 0.07 times 450 weeks = 31.5 weeks

Period of Compensation
31.5 Weeks

31.5 Weeks

MMI

End of initial period of compensation, which is the point at which the EE’s right to increased benefits is determined
Permanent Partial Disability (PPD)

• If, at the end of the initial period of compensation, the worker has not returned to work with any employer, or has returned to work for less than 100% of the pre-injury wages or salary, the employee may file a claim for increased benefits.

• Claim for increased benefits must be filed with a new Petition for Benefit Determination no more than 1 year after the period of compensation ends.

Permanent Partial Disability (PPD)

• If an employee does not return to work (with any employer) or has returned at a lesser wage, the award shall be increased by factor of 1.35 times.

• Example using prior facts:
  - 0.07 X 450 weeks X $500.00 X 1.35 = $21,262.50

• Employee cannot increase award if:
  - Loss of employment was due to voluntary resignation or retirement, provided the resignation/retirement does not result from the work injury;
  - Loss of employment is due to misconduct; or
  - Employee still working but received reduction in pay/hours that affected at least 50% of all hourly workers at that location.

• If Employee qualifies for increased benefits based on factor of 1.35, then award shall be further increased by the following factors, if applicable:
  - Lack of high school education or GED (1.45);
  - Employee is over the age of 40 at the time the period of compensation ends (1.2); and
  - The unemployment rate in the Tennessee county where the employee worked on the date of injury was at least 2% higher than the state average for the year prior to the expiration of the period of compensation (1.3).

• Example using prior facts and assuming all factors are met:
  - 0.07 X 450 X $500 X 1.35 X 1.45 X 1.2 X 1.3 = $48,095.78

• Employer receives credit against increase for any PPD benefits already paid.
PPD: The “Escape Hatch” under Section 242(a)

• In “extraordinary” cases for injuries on or after July 1, 2014 but before July 1, 2016, the employee may instead receive PPD not to exceed 275 weeks, if the Workers’ Compensation Judge determines based on clear and convincing evidence that limiting the employee’s recovery of benefits would be inequitable in light of the totality of the circumstances, and the judge makes specific findings that, as of the date of award or settlement, these 3 facts are true:

1. The employee has been assigned an impairment rating of at least 10% BAW by the authorized treating physician;
2. The ATP has certified that due to the permanent restrictions assigned as a result of the work injury the employee can no longer perform the pre-injury occupation. The ATP’s certification on this issue has a presumption of correctness that may be overcome by clear and convincing evidence to the contrary; and
3. The employee is not earning an average weekly wage or salary that is greater than or equal to 70% of the pre-injury wages or salary.

Medical Treatment and Panels

• Employer must give employee a panel of 3 or more independent physicians, surgeons, chiropractors, or specialty practice groups in the employee’s “community” (still not defined)

• If 3 or more independent physicians, surgeons, chiropractors, or specialty practice groups are not available within worker’s community, then may use 100-mile radius of the community for panel

Medical Treatment and Panels

• If an authorized treating physician makes a referral to a specialist physician, the employer shall be deemed to have accepted the referral unless the employer within 3 business days provides a panel in that specialty

• When an ATP refers the employee to a specialist, the employee shall be entitled to a second opinion, though the employee’s decision to seek a second opinion shall not alter the previous selection of an ATP.
Application of New Legislation

- Applies to injuries on or after July 1, 2014
- All injuries arising prior to this date are governed by prior law

How do you pay for all this good stuff?

Penalties!

- Failure to comply with practically any requirement mentioned in previous slides could lead to a penalty
- Safest to assume that missing a deadline could be a penalty, so calendaring is essential
- Employers may be penalized for actions such as:
  - Failure to timely provide a valid panel of physicians
  - Wrongful failure to pay TTD benefits
  - Wrongful failure to satisfy the terms on an approved settlement
  - Failure to reimburse medical expenses

Penalties assessed by the Division may be challenged, but the challenge must be conducted as a “contested case” under the Uniform Administrative Procedures Act.

Uninsured Employers Fund

- 2014 Public Chapter 765
- The Division of Work Comp has discretion to pay up to $40,000 in medical and temporary disability benefits to eligible employee who
  - worked for employer without WC insurance;
  - sustained compensable injury on or after July 1, 2015;
  - was a Tennessee resident on the date of injury;
  - provided notice to Division of the injury and employer’s uninsured status no more than 60 days after date of injury; and
  - Employee secured a judgment for WC benefits against the employer
- Division has lien against employer for benefits paid